

Application Serial No. 10/091,534
Amendment dated April 27, 2004
Reply to Office Action dated February 17, 2004

REMARKS

Claims 1, 7, 8 -10 and 44 have been amended for clarification purposes and claims 6, 49-52 have been canceled and new claims 53-56 have been added. These amendments are not intended to narrow the scope of these claims. The claims have been rewritten to place them in better form for examination and to further obviate the 37 CFR 1.75(c) objection and 35 U.S.C. 102, 103 and 112 rejections set forth in the Office Action dated February 17, 2004. It is believed that none of these amendments constitute new matter. Withdrawal of these rejections is requested.

Claim 6 is objected to under 37 CFR 1.75(c) as being of improper dependent form for failing to further limit the subject matter of a previous claim. Claim 6 has been canceled by applicant. Accordingly, withdrawal of this objection is requested.

Claims 6, 8 and 49-52 are rejected under 35 U.S.C. 112 first paragraph as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the invention was filed, had possession of the claimed invention. Applicant has canceled claims 6 and claim 49-52. Accordingly, withdrawal of this rejection is requested.

Claim 8 was rejected because the plants produced from the seeds were not defined by genomic structure or by all their phenotypic characteristics. Applicant has amended claim 7 and dependent claim 8 to define the plants regenerated from the tissue culture by their phenotypic characteristics. Accordingly, withdrawal of this objection is requested.

Claims 49-50 were rejected under 35 U.S.C 112 first paragraph as failing to comply with the enablement requirement, the claims containing subject matter that was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or which is the most nearly connected to make and or use the invention.

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Claims 49-50 have been canceled by applicant in favor of new claims 53 and 54. Accordingly, withdrawal of this rejection is requested.

Claims 6, 8, 10 and 44 were rejected under 35 U.S.C 112 second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter that applicant regards as the invention. The Examiner states claim 6 is indefinite because it is unclear what physiological or morphological characteristics of the plant of claim 2 have been altered to produce the male sterile plant. Claim 6 has been canceled by applicant.

The Examiner states claim 8 is indefinite because protoplasts and calli are not tissue culture. Applicant has amended claim 8.

Claim 10 is rejected for lacking antecedent basis for the limitation "the hybrid cantaloupe seed... plants". Claim 10 has been amended as suggested by the Examiner.

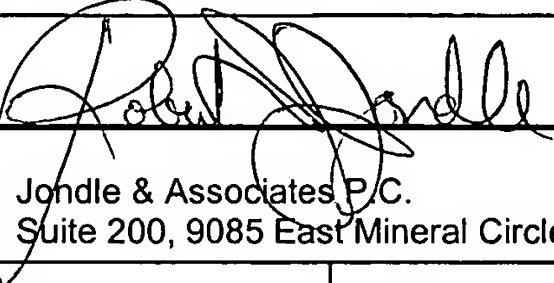
Claim 44 is rejected as indefinite in its recitation of "which produces fruits who increased sweetness". As mentioned by the Examiner, this phrase makes no sense due to a typographical error. Applicant has amended claim 44. Accordingly, withdrawal of these rejections is requested.

Claims 6, 8 and 50-52 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Riley et al. Applicant has canceled claims 6 and 50-52 and amended claim 8. Accordingly, withdrawal of this rejection is requested.

Claims 6, 8 and 50-52 are provisionally rejected under the judicially created doctrine of obviousness type double patenting as being unpatentable over claims 8-25 of issued patent 6,420, 631. Applicant has canceled claims 6 and 50-52 and amended claim 8. Accordingly, withdrawal of this rejection is requested.

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In view of the above amendments and remarks, it is submitted that the claims satisfy the provisions of 35 U.S.C. §§ 102, 103, 112 and the judicially created doctrine of obviousness type double patenting and is not obvious over the prior art. Reconsideration of this application and early notice of allowance is requested.

RESPECTFULLY SUBMITTED,					
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